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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 Arizona Bank & Trust, an Arizona) No. CV 08-1193-PHX-JAT
10 corporation,)

11 Plaintiff,)

12 vs.)

13 Mark A. Ramundo; Jane Doe Ramundo,)
14 husband and wife,)

15 Defendants.)
16

ORDER

17 Pending before this Court is Plaintiff Arizona Bank & Trust's Motion Pursuant to
18 Rule 16(f) (Doc. # 9). For the reasons that follow, the Court denies Plaintiff's motion.

19 **BACKGROUND**

20 In October 2005, Defendant Mark A. Ramundo purchased a parcel of unimproved
21 land, and executed a promissory note and a deed of trust in favor of Plaintiff. Plaintiff
22 alleges that Ramundo defaulted under the promissory note and, as a result, Plaintiff
23 foreclosed its security interest in Ramundo's property. In May 2008, Plaintiff filed the
24 instant action in the Maricopa County Superior Court, seeking from Ramundo the difference
25 between the fair market value of the property and the deficiency balance under the
26 promissory note. In June 2008, Ramundo, self-represented, removed Plaintiff's action to this
27 Court.
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1 In July 2008, Ramundo filed a third-party complaint against certain named third-party
2 defendants. In November 2008, the Court ordered Ramundo to appear and show cause why
3 his third-party complaint should not be dismissed for his failure to properly serve the named
4 defendants pursuant to Federal Rules of Civil Procedure 4. Plaintiff appeared at the show
5 cause hearing, but Ramundo failed to appear. As a consequence, the Court dismissed
6 Ramundo's third-party complaint under Rule 4(m). At the show cause hearing, Plaintiff
7 made an oral motion pursuant to Rule 16(f) to strike Ramundo's Answer and enter judgment
8 against Ramundo for his failure to appear at the show cause hearing. The Court denied
9 Plaintiff's oral motion, but directed Plaintiff to file its motion in writing, at which time the
10 Court would consider the motion.

11 ANALYSIS

12 Plaintiff urges this Court to enter judgment by default against Ramundo or, in the
13 alternative, Plaintiff request the Court to strike Ramundo's answer. As Plaintiff outlines, this
14 Court has authority pursuant to Rule 16(f) and Rule 37(b) to enter sanctions against
15 Ramundo for his failure to attend the show cause hearing. However, the entry of sanctions
16 in such instances falls within the sound discretion of this Court, and upon consideration of
17 Plaintiff's Motion and Ramundo's declaration and response, the Court will not award
18 Plaintiff's requested sanctions. *See Ayers v. City of Richmond*, 895 F.2d 1267, 1269 (9th Cir.
19 1990) ("An award of sanctions under Fed.R.Civ.P. 16(f) is within the discretion of the district
20 court.").


21 Ramundo avers that his failure to appear at the show cause hearing was inadvertent,
22 believing that his dismissal of the third-party defendants obviated his need to appear at the
23 show cause hearing. In so doing, Ramundo appears to have relied upon the advice of an
24 attorney representing him in another related case. In order to prevent future confusions,
25 Ramundo has hired counsel to represent him in this action. The Court is not faced with the
26 situation where one party has wilfully disobeyed this Court or repeatedly ignored the Court's
27 directives.

Moreover, Plaintiff has not been prejudiced by Ramundo's failure to appear at the show cause hearing. The purpose of the hearing was for Ramundo to show cause why he had failed to properly serve the third-party defendants. When Ramundo failed to appear, the Court dismissed his third-party complaint. The Court's actions had no direct effect on Plaintiff, nor was Plaintiff prejudiced by Ramundo's failure to appear.

Accordingly,

IT IS ORDERED that Plaintiff Arizona Bank & Trust's Motion Pursuant to Rule 16(f) (Doc. # 9) is denied.

DATED this 24th day of June, 2009.


James A. Teilborg
United States District Judge